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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

American Traffic Solutions, Inc., a
Kansas corporation,

Plaintiff,

vs.

Michael J. Lenza, an individual; Public
Finance Strategies, LLC, a Delaware
Limited Liability Company; and Photo
Enforcement Consultants, LLC, a
Delaware Limited Liability Company,

Defendants.

No. CV2011-00985-SRB

ANSWER AND COUNTERCLAIM

(Jury Trial Demanded)

Defendants, for their Answer to the Verified Complaint filed by Plaintiff
American Traffic Solutions, Inc. (“ATS”), admit, deny, and allege as follows:

1. Defendants deny the allegations contained in Paragraph 1 of the
Complaint.

2. In Response to Paragraph 2 of the Complaint, Defendants admit that
Defendant Lenza executed an Executive Employment Agreement and a Proprietary
Rights Agreement with ATS. Defendants further admit that Defendant Public Finance
Strategies, LLC (“PFS”) entered into a separate Business Representation Agreement
with ATS. Defendants further admit that copies of said documents are attached to the
Verified Complaint. To the extent that Paragraph 2 purports to characterize or state

1 the contents of said documents, Defendants assert that said documents speak for
2 themselves. To the extent that Paragraph 2 contains additional factual allegations,
3 same are denied.

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5 3. Defendants deny the allegations contained in Paragraph 3 of the
6 Complaint.

7 4. Defendants admit the allegations contained in Paragraph 4 of the
8 Complaint.

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10 5. Defendants deny the allegations contained in Paragraph 5 of the
11 Complaint.

12 6. In Response to Paragraph 6 of the Complaint, Defendants admit that
13 Arizona law governs the Agreements. To the extent that Paragraph 6 contains
14 additional factual allegations, same are denied.

15
16 7. Defendants deny the allegations contained in Paragraph 7 of the
17 Complaint.

18 8. Upon information and belief, Defendants admit the allegations
19 contained in Paragraph 8 of the Complaint.

20
21 9. Defendants admit the allegations contained in Paragraph 9 of the
22 Complaint.

23 10. In Response to Paragraph 10 of the Complaint, Defendants admit that
24 PFS is a Delaware limited liability company that is managed by Michael Lenza.
25 Defendants admit that PFS has more than one member, some of which are residents of
26 Arizona. Defendants further admit that the jury selection clause in the Business
27 Representation Agreement designates Arizona as the appropriate form and PFS does

1 not contest jurisdiction of the Court. To the extent that Paragraph 10 contains
2 additional factual allegations, same are denied.
3

4 11. In Response to Paragraph 11 of the Complaint, Defendants admit that
5 Photo Enforcement Consultants, LLC ("PEC") is a Delaware limited liability
6 company that is managed by Michael Lenza. Defendants admit that PEC has more
7 than one member, some of which are residents of Arizona. Defendants further admit
8 that the form selection clause in the Business Representation Agreement designates
9 Arizona as the appropriate form and PEC does not contest jurisdiction of the Court.
10 To the extent that Paragraph 11 contains additional factual allegations, same are
11 denied.

12 12. In Response to Paragraph 12 of the Complaint, Defendants admit that
13 ATS has claimed damages in excess of \$75,000.00, but specifically deny that
14 Defendants have incurred any damages whatsoever and further deny that Defendants
15 have committed any acts giving rise to liability to ATS. To the extent that Paragraph
16 12 can be construed as containing additional factual allegations, same are denied.
17

18 13. In Response to Paragraph 13 of the Complaint, Defendants do not
19 dispute that jurisdiction and venue are proper in this Court. To the extent that
20 Paragraph 13 contains additional factual allegations, same are denied.

21 14. In Response to Paragraph 14 of the Complaint, Defendants admit that
22 Defendant Lenza was employed with ATS as Senior Vice President for Financial
23 Services from September 30, 2006 to May 13, 2011. Defendants further admit that
24 Defendant Lenza, on behalf of ATS, consulted with municipalities on various issues,
25 but specifically deny that such consultation was a for-profit service offered by ATS.
26 Defendant Lenza further admits that he executed the Employment Agreement and
27 Proprietary Rights Agreement. To the extent that Paragraph 14 contains additional
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1 factual allegations, same are denied.

2
3 15. To the extent that Paragraph 15 purports to recite the contents of court
4 documents, Defendants assert that said documents speak for themselves. To the
5 extent that Paragraph 15 of the Complaint contains additional factual allegations,
6 same are denied.

7 16. In Response to Paragraph 16 of the Complaint, Defendants specifically
8 deny that Defendant Lenza was a party to the Business Representation Agreement.
9 Defendants admit that ATS and PFS entered into a Business Representation
10 Agreement. To the extent that Paragraph 16 purports to recite the contents of
11 documents, Defendants assert that said documents speak for themselves. To the
12 extent that Paragraph 16 contains additional factual allegations, same are denied.

13 17. Defendants deny the allegations contained in Paragraph 17 of the
14 Complaint.

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16 18. Defendants deny the allegations contained in Paragraph 18 of the
17 Complaint.

18 19. Defendants deny the allegations contained in Paragraph 19 of the
19 Complaint.

20
21 20. Defendants deny the allegations contained in Paragraph 20 of the
22 Complaint.

23 21. Defendants deny the allegations contained in Paragraph 21 of the
24 Complaint.

25
26 22. Defendants deny the allegations contained in Paragraph 22 of the
27 Complaint.

1 23. Defendants reallege and incorporate by reference the allegations
2 contained in Paragraphs 1 through 22 above.

3
4 24. To the extent that Paragraph 24 purports to recite the contents of court
5 documents, Defendants assert that said documents speak for themselves. To the
6 extent that Paragraph 24 of the Complaint contains additional factual allegations,
7 same are denied.

8 25. Defendants deny the allegations contained in Paragraph 25 of the
9 Complaint.

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11 26. To the extent that Paragraph 26 purports to recite the contents of court
12 documents, Defendants assert that said documents speak for themselves. To the
13 extent that Paragraph 26 of the Complaint contains additional factual allegations,
14 same are denied.

15 27. Defendants deny the allegations contained in Paragraph 27 of the
16 Complaint.

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18 28. In Response to Paragraph 28 of the Complaint, Defendants admit that
19 ATS has made various wrongful demands upon Defendants and false allegations
20 against Defendants. To the extent that Paragraph 28 can be construed as containing
21 additional factual allegations, same are denied.

22 29. Defendants deny the allegations contained in Paragraph 29 of the
23 Complaint.

24 30. Defendants deny the allegations contained in Paragraph 30 of the
25 Complaint.

1 31. Defendants deny the allegations contained in Paragraph 31 of the
2 Complaint.

3
4 32. Defendants deny the allegations contained in Paragraph 32 of the
5 Complaint.

6 33. Defendants admit the allegations contained in Paragraph 33 of the
7 Complaint.

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9 34. Defendants deny the allegations contained in Paragraph 34 of the
10 Complaint.

11 35. Defendants deny the allegations contained in Paragraph 35 of the
12 Complaint.

13 36. Defendants deny the allegations contained in Paragraph 36 of the
14 Complaint.

15
16 37. Defendants deny the allegations contained in Paragraph 37 of the
17 Complaint.

18 38. Defendants deny the allegations contained in Paragraph 38 of the
19 Complaint.

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21 39. Defendants deny the allegations contained in Paragraph 39 of the
22 Complaint.

23 40. Paragraph 40 of the Complaint is a request for relief and contains no
24 factual allegations that can be admitted or denied. To the extent that Paragraph 40 can
25 be construed as containing such allegations, same are denied.

1 41. Defendants reallege and incorporate by reference the allegations
2 contained in Paragraphs 1 through 40 above.

3
4 42. To the extent that Paragraph 42 purports to characterize or state the
5 contents of said documents, Defendants assert that said documents speak for
6 themselves. To the extent that Paragraph 42 contains additional factual allegations,
7 same are denied.

8 43. Defendants deny the allegations contained in Paragraph 43 of the
9 Complaint.

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11 44. In Response to Paragraph 44 of the Complaint, Defendants admit that
12 ATS has made various wrongful demands upon Defendants and false allegations
13 against Defendants. To the extent that Paragraph 44 can be construed as containing
14 additional factual allegations, same are denied

15 45. Defendants deny the allegations contained in Paragraph 45 of the
16 Complaint.

17
18 46. To the extent that Paragraph 46 purports to characterize or state the
19 contents of said documents, Defendants assert that said documents speak for
20 themselves. To the extent that Paragraph 46 contains additional factual allegations,
21 same are denied.

22 47. Defendants deny the allegations contained in Paragraph 47 of the
23 Complaint.

24 48. Defendants deny the allegations contained in Paragraph 48 of the
25 Complaint.

1 49. Defendants reallege and incorporate by reference the allegations
2 contained in Paragraphs 1 through 49 above.

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4 50. In Response to Paragraph 50 of the Complaint Defendants admit that
5 Defendant Lenza was Senior Vice President of ATS during the term of his
6 employment. To the extent that Paragraph 50 contains statements of legal principles,
7 said legal principles are not factual allegations that Defendants can either admit or
8 deny. To the extent that Paragraph 50 can be construed as containing additional
9 factual allegations, same are denied.

10 51. Defendants deny the allegations contained in Paragraph 51 of the
11 Complaint.

12 52. Defendants deny the allegations contained in Paragraph 52 of the
13 Complaint.

14
15 53. Defendants deny the allegations contained in Paragraph 53 of the
16 Complaint.

17 54. Defendants deny the allegations contained in Paragraph 54 of the
18 Complaint.

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20 55. Defendants reallege and incorporate by reference the allegations
21 contained in Paragraphs 1 through 54 above.

22 56. Defendants deny the allegations contained in Paragraph 56 of the
23 Complaint.

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25 57. Defendants deny the allegations contained in Paragraph 57 of the
26 Complaint.

1 58. Defendants deny the allegations contained in Paragraph 58 of the
2 Complaint.

3
4 59. Defendants deny the allegations contained in Paragraph 59 of the
5 Complaint.

6 60. Defendants reallege and incorporate by reference the allegations
7 contained in Paragraphs 1 through 59 above.

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9 61. Defendants deny the allegations contained in Paragraph 61 of the
10 Complaint.

11 62. Defendants deny the allegations contained in Paragraph 62 of the
12 Complaint.

13 63. Defendants deny the allegations contained in Paragraph 63 of the
14 Complaint.

15
16 64. Defendants reallege and incorporate by reference the allegations
17 contained in Paragraph 1 through 63 above.

18 65. In Response to Paragraph 65 of the Complaint, Defendants admit that
19 PEC is and was aware of the Employment Agreement and Proprietary Rights
20 Agreement. To the extent that Paragraph 65 contains additional factual allegations,
21 same are denied.

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23 66. Defendants deny the allegations contained in Paragraph 66 of the
24 Complaint.

25 67. Defendants deny the allegations contained in Paragraph 67 of the
26 Complaint.

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3 68. Defendants deny the allegations contained in Paragraph 68 of the
4 Complaint.

5 69. Defendants deny the allegations contained in Paragraph 69 of the
6 Complaint.

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8 70. Defendants deny the allegations contained in Paragraph 70 of the
9 Complaint.

10 71. Defendants deny the allegations contained in Paragraph 71 of the
11 Complaint.

12
13 72. Defendants deny the allegations contained in Paragraph 72 of the
14 Complaint.

15 73. Defendants reallege and incorporate by reference the allegations
16 contained n Paragraph 1 through 72 above.

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18 74. Defendants deny the allegations contained in Paragraph 74 of the
19 Complaint.

20 75. Defendants deny the allegations contained in Paragraph 75 of the
21 Complaint.

22
23 76. Defendants deny the allegations contained in Paragraph 76 of the
24 Complaint.

25 77. Defendants deny the allegations contained in Paragraph 77 of the
26 Complaint.

27 78. In Response the unnumbered Paragraph beginning “WHEREFORE,
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1 PLAINTIFF ATS REQUESTS,” and all subparagraphs thereto, Defendants deny that
2 Plaintiff is entitled to the relief requested or any relief whatsoever.
3

4 79. To the extent that the Complaint contains additional factual allegations
5 not expressly admitted herein, same are denied.

6 **AFFIRMATIVE DEFENSES**
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8 80. Plaintiff fails to state a claim for which relief can be granted.

9 81. To the extent that the Complaint alleges breaches of contract by
10 Defendants, any alleged breaches are justified and/or excused by ATS’s prior
11 breaches of same.

12 82. The Complaint is barred by the doctrines of estoppels and waiver.
13

14 83. Defendants reserve the right to assert such other defenses that seems
15 just and appropriate.

16 WHEREFORE, premises considered, Defendants request that:

17 A. The Complaint be dismissed and Plaintiff take nothing thereby;

18 B. Defendants be awarded their reasonable costs and attorneys’ fees
19 pursuant to A.R.S. § 12-341.01;

20 C. The Court awards such other and further relief as it deems just and
21 appropriate.

22 **COUNTERCLAIM**
23

24 For its counterclaim against Plaintiff American Traffic Solutions, Inc.
25 (“ATS”), Counterclaimants Michael J. Lenza (“Lenza”) and Public Finance
26 Strategies, L.L.C. (“PFS”), allege as follows:
27
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THE PARTIES' JURISDICTION AND VENUE

1. Lenza is an individual resident citizen of the State of Massachusetts.

2. PFS is a Delaware limited liability company having its principal place of business in the State of Massachusetts. All members of PFS reside in the State of Massachusetts.

3. Upon information and belief, ATS is incorporated, under the laws of the State of Kansas, and has its principal place of business in the State of Arizona.

4. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

5. This Court has diversity jurisdiction under the provisions of 28 U.S.C. § 1332. Jurisdiction and venue are proper in this Court. Further, jurisdiction and venue are appropriate in this Court based upon the exclusive forum selection clause contained in the Business Representation Agreement described below.

FACTUAL BACKGROUND

6. On or about September 30, 2006, Lenza accepted employment with ATS as Senior Vice President for Financial Services.

7. Prior to joining ATS, Lenza had 27 years of government experience in information technology and government finance. In addition, he had 8 years of experience with private sector outsourcing of complex services, including photo enforcement services.

8. Lenza's duties for ATS included marketing photo enforcement services to various municipalities and political subdivisions. In jurisdictions where photo enforcement was not legal, Lenza would advise municipalities and other political subdivisions regarding legalizing said services. For example, in the State of Massachusetts, municipalities are attempting to legalize photo enforcement through Home Rule Petitions. Advising municipalities and political subdivisions in this matter was not a service for which ATS charged those potential customers. Indeed,

1 if ATS became a paid consultant for a municipality or political subdivision, ATS
2 could not then provide photo enforcement services should that municipality or
3 political subdivision chose to acquire them.

4 9. On or about the same date that Lenza joined ATS, PFS and ATS
5 entered into a Business Representation Agreement. PFS, a limited liability company
6 formed prior to September 30, 2006 by Mr. Lenza, provided revenue related services
7 to municipalities and political subdivisions, including collections of fines and
8 penalties and, in theory, revenue advancement.

9 10. Pursuant to the Business Representation Agreement, ATS was to serve
10 as PFS's exclusive representative in marketing revenue advancing services to ATS
11 customers in the photo enforcement industry. Further, ATS was not to provide
12 revenue advancing services to its customers except through the Business
13 Representation Agreement.

14 11. Subsequent to executing the Business Representation Agreement, ATS
15 used the revenue advancing services available through PFS as a marketing tool in
16 soliciting customers (specifically, in placing bids for public work).

17 12. Despite being contractually obligated to serve as PFS's representative,
18 ATS never provided any revenue advancing clients to PFS. ATS did, however,
19 perform collection services for municipalities without consulting with, obtaining
20 permission from, or sharing revenues with PFS.

21 13. In February, 2011, Lenza advised ATS's president and vice president
22 of marketing that he would be transitioning out of his employment. He specifically
23 informed these ATS officers that he would be providing government consulting
24 services regarding photo enforcement. Lenza made clear to ATS management that
25 he intended to offer the type of consulting services that were outside the scope of the
26 services that ATS provided on a contract basis with its customers. In other words,
27 whereas ATS provides actual photo enforcement services for municipalities, Lenza
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1 intended only to provide consulting services to municipalities regarding how to
2 procure those services and assess the benefits and risks of the programs before
3 entering into contracts, and to provide an independent assessment for the
4 government.. Indeed, the types of services that Lenza intended to provide could not
5 be provided by ATS on a for-profit basis without ATS being conflicted out of
6 providing the actual photo enforcement services themselves.

7 14. Lenza further informed ATS that he would continue to work with
8 ATS's lobbyist in a continuing effort to legalize ATS's products and services and
9 assist with the movement to generate Home Rule Petitions at the local level.

10 15. In an effort to minimize the impact his departure would have on ATS,
11 Lenza agreed to a transition period during which time he would introduce the ATS
12 sales person assigned to do marketing and sales in Massachusetts to Lenza's
13 contacts with municipalities in Massachusetts.

14 16. During meetings with these contacts, almost all of which had ATS
15 representatives present, Lenza advised the contacts that he would be leaving ATS
16 and begin doing private consulting work for municipalities and other governmental
17 entities. Lenza made clear to those contacts that he would not be providing photo
18 enforcement services, only procurement and "Home Rule Petition" consulting
19 services, and that ATS would be the company bidding to provide photo enforcement
20 consulting services should the municipality succeed in passing a Home Rule
21 Petition.

22 17. Lenza's employment terminated May 13, 2011. Within days of the
23 termination of Lenza's employment, ATS filed the instant action, despite having had
24 full knowledge of and tacitly consenting to Lenza's post-employment plans since at
25 least February, 2011.

26 18. In the wake of the termination of Lenza's employment, representatives
27 of ATS, including Greg Parks ("Parks"), met with various public officials and
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1 consultants in Massachusetts and made false and defamatory statements to those
2 public officials and consultants regarding Lenza.

3 19. Specifically, Parks falsely told these officials and consultants that ATS
4 had obtained a “cease and desist order” against Lenza.

5 20. Parks further falsely stated to these public officials and consultants that
6 Lenza was “a fraud.”

7 21. Parks further stated, despite Lenza’s extensive experience, that ATS
8 had taught Lenza “everything he knows.”

9 22. Upon information and belief, these false and defamatory statements
10 were made on behalf of ATS and within the course and scope of Park’s
11 employment.

12 **COUNT ONE**

13 **(Breach of Contract)**

14 23. Defendants reallege and incorporate by reference their responses to
15 Paragraphs 1 through 22 above as if fully restated herein.

16 24. The Business Representation Agreement is a valid and enforceable
17 contract between PFS and ATS.

18 25. Pursuant to the Business Representation Agreement, ATS was to
19 “devote time, effort, resources, ability, skill and attention as may be necessary . . .
20 to perform the services required to be provided to [PFS] under this Agreement.”
21 The services to be provided by ATS were “to promote and secure contracts for
22 [PFS] products and services related” to the revenue advancing services discussed
23 above.

24 26. From September 2006, the inception of the Business Representation
25 Agreement to the present, ATS has failed to secure any contracts whatsoever for
26 revenue advancing.

27. ATS has breached the Business Representation Agreement by failing to devote reasonable time, effort, resources, ability, skill and attention to promoting and securing contracts for PFS revenue advancing services, despite using the availability of PFS's services as a marketing tool for its own photo enforcement product and services.

28. PFS has been damaged by ATS's breach in an amount to prove at trial.

29. PFS is entitled to its reasonable attorneys' fees incurred in bringing this action pursuant to A.R.S. § 12-341.01.

COUNT II

(Breach of Implied Covenant of Good Faith and Fair Dealing)

30. Defendants reallege and incorporate by reference their responses to Paragraphs 1 through 29 above as if fully restated herein.

31. The Business Representation Agreement is a valid and enforceable contract between PFS and ATS.

32. There is implied in every contract a covenant of good faith and fair dealing which prevents one party from taking action to deprive the other party of the benefit of its bargain.

33. ATS has wholly failed and abandoned its duties under the Business Representation Agreement by failing to devote reasonable time, effort, resources, ability, skill and attention to promoting and securing contracts for PFS revenue advancing services, despite using the availability of PFS's services as a marketing tool for its own photo enforcement product and services.

34. PFS has been damaged by ATS's breach of implied covenant of good faith and fair dealing in an amount to be proven at trial.

35. PFS is entitled to its reasonable attorneys' fees incurred in bringing this action pursuant to A.R.S. § 12-341.01.

DEFAMATION

36. Defendants reallege and incorporate by reference their responses to Paragraphs 1 through 35 above as if fully restated herein

37. In the course and scope of his employment with ATS, and on behalf of ATS, Parks made false and defamatory statements to public officials and consultants that tend to harm Lenza's reputation and lower him in the estimation of the community.

38. Parks falsely stated that Lenza was a fraud.

39. Parks falsely stated that ATS had obtained a cease and desist order against Lenza.

40. Parks falsely stated that ATS had taught Lenza everything that he knew.

41. These statements were false.

42. These statements were communicated to someone other than Lenza.

43. These statements have caused harm to Lenza's reputation and lowered his estimation in the community.

44. Lenza has been damaged by these statements in an amount to be proven at trial.

WHEREFORE, premises considered, Defendants request judgment as follows;

A. For damages to PFS in an amount to be proven at trial;

B. For damages to Lenza in an amount to be proven at trial;

C. For an award of PFS's attorneys' fees and costs incurred in bringing this action;

D. Such other and further relief as the Court deems just and appropriate.

1 DATED July 15, 2011.

2 JENNINGS, STROUSS & SALMON, P.L.C.

3
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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2011, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic filing to the following CM/ECF Registrants.

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